Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Subscriber Changes Provisions of the Telecommunications Act of 1996	)	**CC Docket No. 94-129**
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	

REPLY OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), pursuant to Section 1.429(g) of the Commission's Rules, 47 C.F.R. §1.429.(f), hereby respectfully submits its Reply to the oppositions to and comments on the petitions filed by various parties seeking reconsideration or clarification of the *Second Report and Order*, 14 FCC Rcd 1508 (1998) ("*Second Report*") in the above-captioned proceeding.

Sprint and other parties have demonstrated that the Commission's absolution scheme can not be considered the product of reasoned decision-making. The scheme not only raises serious legal and policy issues, but it simply cannot, as a practical matter, be implemented. See Petition of Sprint 5-14; Petition of AT&T at 2-13; Petition of Frontier at 3-9; Comments of MCI at 4-11; Support/Opposition of U S West at 3-8; Comments of GTE at 2-3; Comments of Qwest at 2-5; Opposition and Comments of Cable and Wireless USA at 6-8; and Comments of the Telecommunications Resellers Association at 2-8. The few parties that support the

Commission's absolution scheme do not challenge the fact that such scheme, whatever its legal merits, is unworkable.

As for legal justification, they repeat the Commission's view that Section 258 applies only in cases where the consumer has paid the charges for the services received, thereby leaving the Commission free to fashion its own remedy in cases where the consumer claims that he or she has been slammed and then has refused to pay for the long distance services he or she has admittedly received. *See* Opposition of the NASUCA at 3, Response of SBC at 3, and Opposition of NTCA at 5. This is hardly convincing. Ordinarily, unless customers can make some showing that they were slammed, they would not be entitled to what amounts to a damages award in the form of absolution. To absolve customers of the responsibility of paying for the services they receive based upon naked allegations of slamming might well deprive carriers of payment for services they legitimately provided. In many cases, there is an obligation to pay for services one did not even order because of the benefits accepted and received. The doctrine of quantum meruit recognizes that it is entirely equitable that the recipient of a benefit pay some charge for the benefit. Section 258 does not change this. But it would be an odd reading of the Act that Congress would have bothered itself with the need to achieved equity between the preferred and slamming carriers if it also assumed that customers would not have pay at all. Most customers would soon learn that they would not have to pay their bills for long distance calls they placed simply by alleging that they have been slammed and the liability provision set forth in Section 258(b) would become a virtual nullity.

SBC disputes Sprint's observation that the authorized carrier, which, under the Commission's scheme, makes the determination as to whether a slam has occurred, will unlikely

judge such evidence in a fair and impartial basis.[1] Although SBC concedes that such procedure "may not appear to be completely unbiased," it argues that it "would be foolhardy for the authorized carrier to just summarily reject evidence that a carrier change was verified in accordance with the Commission's rules." This is so, or so SBC's argument runs, because the accused carrier can file a Section 208 complaint against the authorized carrier and thus "in reality the threat of liability for a wrong decision should provide a strong deterrent to any decision that a slam occurred unless the evidence supports that decision." Response at 6.

SBC is "blowing smoke." Competitive carriers are constantly battling with their rivals to gain and retain customers. In weighing the risk of losing a customer by essentially accusing such customer of lying about being slammed against the risk of being sued by the accused carrier before the Commission, the authorized carrier invariably will side with its customer and determine that the accused carrier is guilty of a slam. By doing so, the authorized carrier will generate good will with the customer. Moreover, the authorized carrier has a significant out-of-pocket economic incentive to find in favor of its end user. It is entitled to the revenues received by the accused carrier from the paying customer and the charges from day 31 on from the customer who chose not to pay. And, it will not have to bill the customer on behalf of the accused carrier. Of course, the authorized carrier will also have to factor in the threat of having to defend itself in a Section 208 complaint before the Commission. But such threat will hardly deter the authorized carrier from viewing the evidence in light of its own self-interest. As Sprint pointed out in its Petition (at 10),

> [t]he complaint process is not costless to the complaining carrier; the likelihood of obtaining a quick decision from the Commission

[1] NASCUA argues that the executing carrier should determine whether a slam has occurred since such carrier has "less of an interest in the outcome." The notion that an executing carrier would be not be biased in adjudicating a slamming complaint is absurd. Executing LECs are competitors of the IXCs in intraLATA markets and many, if not most, have affiliates competing with IXCs in the interLATA market.

> is remote; and the ability to collect damages from the authorized carrier or executing carrier without additional procedures either before the Commission or in district court (*see* 47 U.S.C. §407) is problematic.

In any case, the Commission lacks the statutory authority to delegate its responsibility for adjudicating whether a carrier violated the Act to a competitor of that carrier. *See* Sprint Petition at 10; AT&T Petition at 6-7. SBC does not present any argument to the contrary.

SBC inadvertently also points up the fact the Commission's scheme is unworkable. Under the scheme, the authorized carrier is responsible for investigating the slam and attempting to ensure that the slammed customer is made whole. But if the customer calls his LEC to complain of the slam, the LEC will only switch the customer back to the authorized carrier. It will not inform the authorized carrier that such switch was the result of a slam. Nor will it inform the accused carrier that it lost the customer because the customer accused it of a slam.[2] Thus, the authorized carrier cannot begin its investigation and the accused carrier cannot begin to defend itself.

SBC does suggest a remedy to this problem, although such remedy eschews any LEC responsibility of providing the necessary information to the authorized and accused carriers so that the procedures mandated by the Commission can be started. Rather, SBC's suggestion is to have the LEC instruct each customer claiming to have been slammed to report such slam to either her authorized preferred or accused carrier. *See* SBC Response at 12. What SBC fails to recognize is that the customer is highly unlikely to make such calls. Such customer will have been returned to his or her preferred carrier without cost and will have already received a credit from the LEC for all of the charges of the accused carrier for whom the LEC provides billing and

[2] SBC even objects to providing customers with accurate information as to the identity of their interLATA carriers. *See* SBC Response at 10 objecting to Sprint's long-advocated proposal that the LECs be required "to readily identify that a customer's preferred carrier is a switchless reseller, instead of the reseller's underlying facilities-based carrier."

collection services. The only thing that could happen by calling the preferred or accused carrier would be a reversal of such credit and no customer acting in an economically rational manner would voluntarily seek to have the credited charges restored. In any event, the Commission does not have any statutory basis to compel customers to make such calls. The fact that SBC suggests that implementation of the dispute resolution procedures mandated by the Commission be made entirely dependent upon persons or entities over which the Commission lacks jurisdiction provides additional evidence -- as if more were needed -- that the Commission's scheme is not only unworkable but is arbitrary and capricious as well.

Finally, Bell Atlantic appears to suggest that any time a consumer initiates a carrier change through his or her LEC, such change need not be verified. Bell Atlantic Comments at 4. However, if the consumer currently subscribing to the intraLATA services of an IXC decides to switch back to his or her LEC and so informs the LEC, such LEC would have to verify the change. Although the LEC is still the executing carrier, it is also a submitting carrier albeit to itself. *See Second Report* at 1565-66 (¶94). Given Bell Atlantic's apparent confusion here, the Commission in its *Order on Reconsideration*, should reiterate the verification requirements of executing carriers when they are also submitting carriers.

Respectfully submitted,

SPRINT CORPORATION

Leon M. Kestenbaum
Jay C. Keithley
Michael B. Fingerhut
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036
(202) 828-7438

July 8, 1999

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Reply of Sprint Corporation** was sent by hand or by United States first-class mail, postage prepaid, on this the 8th day of July, 1999 to the parties on the attached list.

Christine Jackson

July 8, 1999

Bradley Stillman, Esq.
MCI Telecommunications Corp.
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Ms. Genevieve Morelli
CompTel
1900 M St., N.W., Suite 800
Washington, D.C. 20036

Robert Aamoth, Esq.
John Heitmann, Esq.
Kelley Drye & Warren LLP
Suite 500
1200 19th Street, N.W.
Washington, D.C. 20036

Rogena Harris, Esq.
Harisha Bastiampillai, Esq.
Helein & Associates, P.C.
Suite 700
8180 Greensboro Drive
McLean, VA 22102

Kevin Gallagher, Esq.
360° Communications Company
8725 W. Higgins Road
Chicago, IL 60631

Charles Hunter, Esq.
Catherine Hannan, Esq.
Hunter Communications
1620 I St., N.W., Suite 701
Washington, D.C. 20006

Gary Phillips, Esq.
Counsel for Ameritech
1401 H St., N.W., Suite 1020
Washington, D.C. 20005

David Poe, Esq.
Yvonne Coviello, Esq.
LeBoeuf, Lamb, Green &
MacRae LLP
Suite 1200
1875 Connecticut Ave, N.W.
Washington, D.C. 20009

Ian D. Volner, Esq.
Heather McDowell, Esq
Venable, Baetjer, Howard &
Civiletti, L.L.P.
Counsel for The DMA
Suite 1000
1201 New York Avenue
Washington, D.C. 20005

Stephen Bozzo, Esq.
Bell Atlantic Tel. Co.
NYNEX Long Distance Co.
Eight Floor
1320 N Court House Road
Arlington, VA 22201

Catherine Sloan, Esq.
Richard Fruchterman, III, Esq.
Richard Whitt, Esq.
Counsel for WorldCom
Suite 400
1120 Connecticut Ave., N.W.
Washington, D.C. 20036

Brian Sulmonetti, Esq.
WorldCom, Inc.
Suite 400
1515 S. Federal Highway
Boca Raton, FL 33432

Douglas Brent
WorldCom, Inc.
Suite 700
9300 Shelbyville Road
Louisville, Kentucky 40222

The Law Offices of Michael R. Gardner, P.C.
Counsel to TPV Services
Suite 710
1150 Connecticut Ave., N.W.
Washington, D.C. 20036

Douglas Kinkiph, Esq.
LCI International Telecom Corp.
Suite 800
8180 Greensboro Drive
McLean, VA 22102

Danny Adams, Esq.
Rebekah Kinnett
Kelley Drye & Warren LLP
Suite 500
1200 19th Street, N.W.
Washington, D.C. 20036

Kathleen Abernathy, Esq.
David Gross, Esq.
AirTouch Communications
Suite 800
1818 N Street, N.W.
Washington, D.C. 20036

Charles Cosson, Esq.
AirTouch Communications
One California St., 29th FL
San Francisco, CA 94111

Jonathan Canis
Andrea Pruitt
Kelley Drye & Warren LLP
Suite 500
1200 19th Street, N.W.
Washington, D.C. 20036

Lawrence Malone
General Counsel
New York State
Department of Public Serv.
Albany, NY 12223

Jean Kiddoo, Esq.
Dana Frix, Esq.
Marcy Green
Swidler & Berlin, Chtd.
Counsel for RCN Telecom
Suite 300
3000 K street, N.W.
Washington, D.C. 20007

Peter Bluhm, Esq.
Vermont Public Service
Board
Drawer 20
Montpelier, Vermont 05620

J. Christopher Dance, Esq.
Robbin Johnson, Esq.
Excell Communications, Inc.
8750 N central Expressway
Dallas, TX 75231

John Scott, III, Esq.
Crowell & Moring LLP
1001 Pennsylvania Ave.,N.W.
Washington, D.C. 20004

Jeffrey Linder, Esq.
Suzanne Yelen, Esq.
Counsel for GTE
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Andre J. Lachance, Esq.
GTE Service Corporation
Suite 1200
1850 M Street, N.W.
Washington, D.C. 20036

Richard McKenna, Esq.
GTE Telephone Operations
600 Hidden Ridge
Irving, TX 75038

Peter Arth, Jr., Esq.
Lionel Wilson, Esq.
Counsel for People of State
of CA and PUC of CA
505 Van Ness Avenue
San Francisco, CA 94102

Kristen Doyle, Esq.
Office of Public Utility Counsel
Suite 9-180
1701 N Congress Avenue
P.O. Box 12397
Austin, TX 78711

Bret Slocum
Director-Legal Division
Public Utility Commission
of Texas
1701 N Congress Avenue
P.O. Box 13326
Austin, TX 78711

Timothy Carey
Chairman and Executive Director
State Consumer Protection Board
Suite 2101
5 Empire State Plaza
Albany, NY 12223

Cynthia Miller
Associate General Counsel
Florida PSC
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Robert Tongren, Esq.
Evelyn Robinson, Esq.
Ohio Consumers' Counsel
77 South High Street, 15th Floor
Columbus, Ohio 43221

Vickie Moir, Esq.
Public Staff - North Carolina Utilities Comm.
P. O. Box 29520
Raleigh, NC 27626

Philip McClelland Assistant
Consumer Advocate
Office of Attorney General
1425 Strawberry Square
Harrisburg, PA 17120

Edward Addison, Director
Division of Communications
P.O. Box 1197
Richmond, VA 23218

Bryan Moorhouse
General Counsel
Maryland PSC
6 Saint Paul Street
Baltimore, MD 21202

Karen Finstad Hammel, Esq.
Montana PSC
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620

Rachel Rothstein, Esq.
Paul Kenefick, Esq.
Cable and Wireless, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Gary Mann, Esq.
IXC Long Distance, Inc.
Suite 700
98 San Jacinto Blvd.
Austin, TX 78701

Michael Shortley, III, Esq.
Attorney for Frontier
180 S. Clinton Avenue
Rochester, NY 14646

Robert Taylor, Esq.
Brittan Communications
International Corp.
Suite 500
600 Jefferson
Houston, TX 77002

M. Robert Sutherland, Esq.
Richard Sbaratta, Esq.
BellSouth Corp.
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309

Kathryn Krause, Esq.
U S West, Inc.
Suite 700
1020 19th Street, N.W.
Washington, D.C. 20036

Wendy Bluemling, Director
Regulatory Affairs
SNET
227 Church Street
New Haven, CT 06510

Mary McDermott, Esq.
Linda Kent, Esq.
Keith Townsend, Esq.
USTA
1401 H St., N.W., Suite 600
Washington, D.C. 20005

David Meier, Director
Regulatory Affairs
Cincinnati Bell Telephone
201 E Fourth Street
P.O. Box 2301
Cincinnati, OH 45201

Robert Lynch, Esq.
Durward Dupre, Esq.
Southwestern Bell
One Bell Center, Suite 3520
St. Louis, MO 63101

Nancy Woolf, Esq.
Jeffrey Thomas, Esq.
Pacific Bell
Nevada Bell
Suite 1529
140 New Montogmery Street
San Francisco, CA 94105

John Adams, Esq.
Citizens Utilities Company
Suite 500
1400 16th Street, N.W.
Washington, D.C. 20036

Mark C. Rosenblum, Esq.
Peter H. Jacoby, Esq.
AT&T Corp.
295 N. Maple Avenue
Basking Ridge, NJ 07920

Richard Blumenthal
Attorney General
State of Connecticut
55 Elm Street, 7th Floor
Hartford, CT 06106

Jim Spurlock, Esq.
AT&T
Room 520 South
1120 20th St., N.W.
Washington, D.C. 20036

The Illinois Commerce Commission
160 N. LaSalle, Suite C800
Chicago, IL 60601

Joseph Guerra, Esq.
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

Dorothy Attwood, Esq.
Common Carrier Bureau
Enforcement Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dan Sussman, Esq.
Mary Brown, Esq.
Bradley Stillman, Esq.
MCI Telecommunications Corp.
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Rob McDowell, Esq.
CompTel
Suite 800
1900 M Street, N.W.
Washington, D.C. 20036

Anita Cheng, Esq.
Common Carrier Bureau
Enforcement Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Glenn Reynolds, Esq.
Common Carrier Bureau
Enforcement Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Kimberly Parker, Esq.
Common Carrier Bureau
Enforcement Division
Federal Communications
Commission
445 12th Street, S.W.
Washington, D.C. 20554

International Transcription
Service
Room 246
1919 M Street, N.W.
Washington, D.C. 20554

John F. Raposa, Esq.
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092

Teresa K. Gaugler, Esq.
Qwest Communications Corp.
4250 North Fairfax Drive
Arlington, VA 22203

Alfred Richter, Jr., Esq.
Roger Toppins, Esq.
Barbara Hunt, Esq.
One Bell Plaza, Room 3026
Dallas, Texas 75202